

## **Exhibit D**

Glenn Randle

November 17, 2005

Chicago, IL

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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In re: PHARMACEUTICAL	MDL DOCKET NO.
INDUSTRY AVERAGE WHOLESALE	CIVIL ACTION
PRICE LITIGATION	01CV12257-PBS

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THIS DOCUMENT RELATES TO:

ALL ACTIONS

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Deposition of GLENN RANDLE, taken before  
GREG S. WEILAND, CSR, RMR, CRR, Notary Public,  
pursuant to the Federal Rules of Civil Procedure for  
the United States District Court pertaining to the  
taking of depositions, at Suite 2000, One North  
LaSalle Street, in the City of Chicago, Cook County,  
Illinois, commencing at 8:11 o'clock a.m., on the  
17th day of November, 2005.

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<p>1 PRESENT:</p> <p>2 THE WEXLER FIRM, LLP, by</p> <p>3 MS. JENNIFER FOUNTAIN CONNOLLY</p> <p>4 One North LaSalle Street</p> <p>5 Suite 2000</p> <p>6 Chicago, Illinois 60602</p> <p>7 (312) 346-2222</p> <p>8 E-mail: jfconnolly@wexlerfirm.com</p> <p>9</p> <p>10 ROPES &amp; GRAY LLP, by</p> <p>11 MR. ERIC P. CHRISTOFFERSON</p> <p>12 One International Place</p> <p>13 Boston, Massachusetts 02110-2624</p> <p>14 (617) 951-7000</p> <p>15 E-mail: eric.christofferson@ropesgray.com</p> <p>16 On behalf of Schering-Plough</p> <p>17 Corporation and Warrick</p> <p>18 Pharmaceuticals Corporation;</p> <p>19</p> <p>20</p> <p>21</p> <p>22 (CONTINUED)</p>	<p>1 INDEX</p> <p>2 November 17th, 2005</p> <p>3 GLENN RANDLE</p> <p>4 PAGE</p> <p>5 Examination by Mr. Christofferson .....7</p> <p>6 Examination by Mr. Sweeney .....142</p> <p>7 Examination by Ms. Connolly .....146</p> <p>8</p> <p>9</p> <p>10 DEPOSITION EXHIBITS</p> <p>11</p> <p>12 NUMBER DESCRIPTION PAGE</p> <p>13 Exhibit Randle 001 Notice of Rule 30(b)(6)</p> <p>14 Deposition to Sheet Metal</p> <p>15 Workers National Health</p> <p>16 Fund, 5 pages.....9</p> <p>17 Exhibit Randle 002 Affidavit of Glenn Randle,</p> <p>18 Bates labeled SMW 0001</p> <p>19 through 0003.....36</p> <p>20</p> <p>21</p> <p>22 (CONTINUED)</p>
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<p>1 PRESENT (CONTINUED):</p> <p>2 HOGAN &amp; HARTSON LLP, by</p> <p>3 MR. THOMAS J. SWEENEY, III</p> <p>4 875 Third Avenue</p> <p>5 New York, New York 10022</p> <p>6 (212) 918-3523</p> <p>7 E-mail: tjsweeney@hhlaw.com</p> <p>8 On behalf of Bristol-Myers</p> <p>9 Squibb, Apothecan and OTN.</p> <p>10</p> <p>11 ALSO PRESENT:</p> <p>12 MR. JAN JENNINGS.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 DEPOSITION EXHIBITS (CONTINUED)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit Randle 003 Supplemental Medicare</p> <p>4 Wraparound Plus (SMW+)</p> <p>5 Program of the Sheet Metal</p> <p>6 Workers' National Health</p> <p>7 Fund, Summary Plan</p> <p>8 Description, Bates labeled</p> <p>9 SMW 0004 through 0033.....37</p> <p>10 Exhibit Randle 004 Sheet Metal Workers'</p> <p>11 National Health Fund,</p> <p>12 Amended and Restated</p> <p>13 Plan Document, Effective</p> <p>14 January 1, 2002, Bates labeled</p> <p>15 SMW 0604 through 0738.....39</p> <p>16 Exhibit Randle 005 Sheet Metal Workers</p> <p>17 National Pension Fund</p> <p>18 Supplemental Medicare</p> <p>19 Wraparound Plus (SMW+),</p> <p>20 1993, Bates labeled SMW</p> <p>21 0581 through 0603.....43</p> <p>22 (CONTINUED)</p>

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<p>1 (Witness sworn.)</p> <p>2 MR. CHRISTOFFERSON: Before we begin, is</p> <p>3 there anyone else on this call? I didn't hear any</p> <p>4 beeps, but I figured I would check.</p> <p>5 All right. We will proceed without them,</p> <p>6 whoever they may be.</p> <p>7 GLENN RANDLE</p> <p>8 after being first duly sworn, testified as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. CHRISTOFFERSON:</p> <p>11 Q. Could you please state your full name for</p> <p>12 the record.</p> <p>13 A. Glenn Randle.</p> <p>14 Q. And what is your current address?</p> <p>15 A. 8304 Adirondack Trail, Austin, Texas.</p> <p>16 Q. Have you ever been deposed before,</p> <p>17 Mr. Randle?</p> <p>18 A. Yes.</p> <p>19 Q. And when was that?</p> <p>20 A. Probably been ten years or so ago.</p> <p>21 Q. What was the case in which you were</p> <p>22 deposed?</p>	<p>1 that you don't understand, just let me know, and</p> <p>2 I'll try to rephrase the question and ask it in a</p> <p>3 different way.</p> <p>4 And certainly if you need to take a break,</p> <p>5 just let me or counsel know, and we certainly can</p> <p>6 take a break at any time. That's not a problem.</p> <p>7 Do you understand that you're under a</p> <p>8 legal obligation to tell the truth here in your</p> <p>9 deposition today?</p> <p>10 A. Definitely.</p> <p>11 MR. SWEENEY: Has he been sworn?</p> <p>12 MR. CHRISTOFFERSON: Yes.</p> <p>13 Could you please mark this.</p> <p>14 (Exhibit Randle 001 marked as</p> <p>15 requested.)</p> <p>16 BY MR. CHRISTOFFERSON:</p> <p>17 Q. Would you just take a moment to look over</p> <p>18 that.</p> <p>19 A. Uh-huh.</p> <p>20 Q. Mr. Randle, the court reporter has handed</p> <p>21 you what's been marked as Exhibit Randle 001.</p> <p>22 Have you seen this document before?</p>

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<p style="text-align: right;">Page 10</p> <p>1 A. No.</p> <p>2 Q. You have not. Could you please turn to</p> <p>3 Page Number 3. It says areas of inquiry.</p> <p>4 A. Uh-huh.</p> <p>5 Q. Have you seen these various areas of</p> <p>6 inquiry numbered 1 through 19 before?</p> <p>7 A. Yes, uh-huh.</p> <p>8 Q. You have. Which of these areas of inquiry</p> <p>9 are you designated to testify to today?</p> <p>10 MS. CONNOLLY: I think we can do this by</p> <p>11 stipulation. As you and I have discussed,</p> <p>12 Mr. Randle is here today to respond to the issue</p> <p>13 raised in Judge Saris' classification order, which</p> <p>14 is whether the Fund reimbursed for the drugs at</p> <p>15 issue in the case and whether those reimbursements</p> <p>16 are based on AWP. Obviously we will give you some</p> <p>17 latitude about adequacy questions, but we will not</p> <p>18 be producing him for all the areas of inquiry. As</p> <p>19 far as we're concerned, that's the limit of today's</p> <p>20 deposition.</p> <p>21 MR. CHRISTOFFERSON: Understood.</p> <p>22 BY MR. CHRISTOFFERSON:</p>	<p style="text-align: right;">Page 12</p> <p>1 A. L-y-n-n, B-r-a-s-s-e-l.</p> <p>2 MR. CHRISTOFFERSON: Excuse me for a</p> <p>3 moment.</p> <p>4 Who just joined? Did anyone just join the</p> <p>5 call? I thought I heard a beep.</p> <p>6 MR. SWEENEY: Definitely.</p> <p>7 MR. CHRISTOFFERSON: If someone just</p> <p>8 joined the call, if you could please identify</p> <p>9 yourself.</p> <p>10 MS. CONNOLLY: That happened to me earlier</p> <p>11 this week.</p> <p>12 MR. CHRISTOFFERSON: Okay. We will just</p> <p>13 keep going.</p> <p>14 BY MR. CHRISTOFFERSON:</p> <p>15 Q. I'm sorry to interrupt you. You said that</p> <p>16 you met with Lynn Brassel at Southern Benefits</p> <p>17 Administrator?</p> <p>18 A. I didn't meet with him, just visited with</p> <p>19 him to verify my remembrance on it.</p> <p>20 Q. And what did you talk about with Lynn?</p> <p>21 A. Some of these questions just to again</p> <p>22 verify my memory of it.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Mr. Randle, do you understand that as the</p> <p>2 designee for the various topics that you are</p> <p>3 designated to testify to that you're obliged to</p> <p>4 provide all the information reasonably available to</p> <p>5 the Sheet Metal Workers National Health Fund and</p> <p>6 that are related to those areas?</p> <p>7 A. Yes.</p> <p>8 Q. What steps did you take to learn all that</p> <p>9 is reasonably available to the organization on these</p> <p>10 topics?</p> <p>11 A. Well, visiting with the third-party</p> <p>12 administrator and, of course, I've been on this Fund</p> <p>13 for 20 years, so just a working knowledge through</p> <p>14 the years of it.</p> <p>15 Q. You say that you visited with the</p> <p>16 third-party administrator.</p> <p>17 Who is the third-party administrator?</p> <p>18 A. Southern Benefits Administrator.</p> <p>19 Q. And who at Southern Benefits Administrator</p> <p>20 did you visit with?</p> <p>21 A. Lynn Brassel.</p> <p>22 Q. Would you please spell that?</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Did you look at any documents in</p> <p>2 preparation for the deposition today?</p> <p>3 A. No, just these questions.</p> <p>4 Q. And is there anything else that you did in</p> <p>5 preparation for your deposition here today?</p> <p>6 A. No.</p> <p>7 Q. Other than speaking with your lawyer, of</p> <p>8 course.</p> <p>9 A. Right, uh-huh.</p> <p>10 Q. You mentioned earlier that you were</p> <p>11 deposed in a case where you were a trustee for a</p> <p>12 personal trust ten years ago.</p> <p>13 Was that in the -- was that 1995 or was it</p> <p>14 approximately ten years ago?</p> <p>15 A. I would say approximately '95 would be</p> <p>16 correct.</p> <p>17 Q. Have you ever been involved in a criminal</p> <p>18 legal proceeding?</p> <p>19 A. No.</p> <p>20 Q. Other than this case and the time that you</p> <p>21 were deposed in that case involving a personal</p> <p>22 trust, have you been involved in any other civil</p>

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<p style="text-align: right;">Page 14</p> <p>1 legal proceeding?</p> <p>2 A. My firm has filed suit on other</p> <p>3 contractors, you know, for work performed, unpaid,</p> <p>4 you know, that type thing, so a few where I won I</p> <p>5 guess we would say there. It never went to trial,</p> <p>6 but it went through the process of negotiation,</p> <p>7 mediation.</p> <p>8 Q. And it was an employment issue, is that</p> <p>9 what you said?</p> <p>10 A. No, they were general contractor on the</p> <p>11 job. It was for damages, delay damages on a</p> <p>12 construction job.</p> <p>13 Q. And approximately when was that?</p> <p>14 A. It would have been in 2004 when the</p> <p>15 mediation happened. The job was probably in '95</p> <p>16 itself.</p> <p>17 Q. The mediation was in 2004. Do you</p> <p>18 remember approximately when the suit was filed?</p> <p>19 A. It would be a guess on my part, you know,</p> <p>20 but early 2004. You know, actually the thing was</p> <p>21 probably before then and kept being deferred, so it</p> <p>22 might have been 2003 when it was originally.</p>	<p style="text-align: right;">Page 16</p> <p>1 Mr. Randle?</p> <p>2 A. 463-60-0639.</p> <p>3 Q. And what is your date of birth?</p> <p>4 A. June 27, '43.</p> <p>5 Q. Did you go to high school, Mr. Randle?</p> <p>6 A. Sure did.</p> <p>7 Q. Did you graduate from high school?</p> <p>8 A. Yes.</p> <p>9 Q. When did you graduate?</p> <p>10 A. 1962.</p> <p>11 Q. And did you attend college?</p> <p>12 A. Yes. I went to a business school,</p> <p>13 Nixon Clay, attended Southwest Texas State</p> <p>14 San Marcos a few semesters, and the University of</p> <p>15 Texas a few semesters.</p> <p>16 Q. Did you obtain a degree from any of those</p> <p>17 institutions?</p> <p>18 A. The business college I did.</p> <p>19 Q. And what was that degree?</p> <p>20 A. Accounting.</p> <p>21 Q. And at Southwest Texas State did you</p> <p>22 obtain a degree?</p>
<p style="text-align: right;">Page 15</p> <p>1 MR. CHRISTOFFERSON: Did someone just</p> <p>2 join?</p> <p>3 THE WITNESS: Have we got a mute button or</p> <p>4 something?</p> <p>5 MR. CHRISTOFFERSON: It may be that</p> <p>6 because no one has joined they keep reminding us</p> <p>7 that we're by ourselves. I'm not really sure.</p> <p>8 If anyone joined, if you could identify</p> <p>9 yourself, that would be great.</p> <p>10 BY MR. CHRISTOFFERSON:</p> <p>11 Q. Excuse me again, Mr. Randle.</p> <p>12 A. That's all right.</p> <p>13 Q. You were talking about that one case</p> <p>14 involving a general contractor dispute.</p> <p>15 Any other lawsuits?</p> <p>16 A. None to my remembrance.</p> <p>17 Q. Are you on any medication today that would</p> <p>18 impair or limit your ability to answer truthfully or</p> <p>19 recollect or otherwise participate in this</p> <p>20 deposition?</p> <p>21 A. No.</p> <p>22 Q. What's your Social Security Number,</p>	<p style="text-align: right;">Page 17</p> <p>1 A. No.</p> <p>2 Q. What did you study there?</p> <p>3 A. It was basic freshman English and just the</p> <p>4 basic courses for a freshman.</p> <p>5 Q. And did you also say the University of</p> <p>6 Texas?</p> <p>7 A. Yes.</p> <p>8 Q. And did you obtain a degree from the</p> <p>9 University of Texas?</p> <p>10 A. No.</p> <p>11 Q. What did you study at the University of</p> <p>12 Texas?</p> <p>13 A. Accounting courses.</p> <p>14 Q. When did you obtain your degree from</p> <p>15 Nixon Clay Business College?</p> <p>16 A. It would have been in January of '64.</p> <p>17 Q. Was that a BA?</p> <p>18 A. You know, it's just a private business</p> <p>19 college, you know, so it's just their accounting</p> <p>20 degree, you know.</p> <p>21 Q. Did you attend any graduate school?</p> <p>22 A. No.</p>

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<p style="text-align: right;">Page 18</p> <p>1 Q. Did you otherwise receive any additional</p> <p>2 formal educational training?</p> <p>3 A. No, just attending seminars and things</p> <p>4 like that has been the only other thing, nothing</p> <p>5 accredited or, you know, formal.</p> <p>6 Q. You testified earlier that your firm had</p> <p>7 been sued -- excuse me, that your firm was involved</p> <p>8 in a lawsuit a couple of years ago.</p> <p>9 Is that the firm that you're currently</p> <p>10 employed at?</p> <p>11 A. No. That -- let me think a bit.</p> <p>12 The firm that I owned, I had five of them.</p> <p>13 That particular firm is no longer in business. It's</p> <p>14 a corporate shell at this point.</p> <p>15 Q. Okay. You own several companies now?</p> <p>16 A. Yes. I sold two of them in July of '04 to</p> <p>17 Carrier Corporation, and I have one operating</p> <p>18 company, a leasing company that leases to that</p> <p>19 company that are currently operational.</p> <p>20 Q. Okay. Let's start with the ones that are</p> <p>21 currently operational.</p> <p>22 How many are there?</p>	<p style="text-align: right;">Page 20</p> <p>1 Is the FS the YPS Facility Services</p> <p>2 company?</p> <p>3 A. Right.</p> <p>4 Q. Just generally, what are your</p> <p>5 responsibilities as general partner and then as</p> <p>6 president at these two companies?</p> <p>7 A. Well, as general partner, to promote the</p> <p>8 business, to obtain opportunities to work with new</p> <p>9 firms and expand the work that we're doing with</p> <p>10 existing firms, so it's somewhat in the sales and PR</p> <p>11 areas.</p> <p>12 And then with Randle Leasing, the</p> <p>13 purchasing of those assets and setting up leaseback</p> <p>14 contracts.</p> <p>15 Q. I'm not going to go into too much detail</p> <p>16 about these, but just a couple of quick additional</p> <p>17 questions.</p> <p>18 How many employees does each company have?</p> <p>19 Let's start with Randle Leasing.</p> <p>20 A. Randle Leasing doesn't have any employees.</p> <p>21 My wife and I are the president and vice president.</p> <p>22 We're not on a salary for that company.</p>
<p style="text-align: right;">Page 19</p> <p>1 A. There's two.</p> <p>2 Q. Two. And what are those?</p> <p>3 A. YPS Facility Services and Randle Leasing</p> <p>4 Incorporated.</p> <p>5 Q. And what do those firms do?</p> <p>6 A. Randle Leasing just buys assets and rents</p> <p>7 them to the FS company. It has in the past leased</p> <p>8 equipment to other companies but currently just the</p> <p>9 one.</p> <p>10 And YPS Facility Services is an on-site</p> <p>11 facility service business that provides mechanical</p> <p>12 system observation, repairs, maintenance, and also</p> <p>13 it does piping work, sheet metal fabrication,</p> <p>14 installation work and test and balancing for</p> <p>15 mechanical systems.</p> <p>16 Q. And do you have an official title at</p> <p>17 either or both of these companies?</p> <p>18 A. The Facility Service company I'm the</p> <p>19 general partner, and Randle Leasing I'm the</p> <p>20 president.</p> <p>21 Q. And I believe you said that Randle Leasing</p> <p>22 buys assets and leases them to the FS company.</p>	<p style="text-align: right;">Page 21</p> <p>1 Facility Services has approximately</p> <p>2 75 employees.</p> <p>3 Q. You said that you have recently, and by</p> <p>4 recently I mean the last couple years, sold some</p> <p>5 additional companies that you at one time ran.</p> <p>6 What were those companies?</p> <p>7 A. One was Young &amp; Pratt Service</p> <p>8 Incorporated. The second one was YPS Refrigeration.</p> <p>9 Q. What, again just generally, what did those</p> <p>10 companies do?</p> <p>11 A. They provided what we called demand</p> <p>12 service on air conditioning and plumbing, heating</p> <p>13 systems, so repairs and equipment replacement, and,</p> <p>14 of course, Refrigeration was the same thing in the</p> <p>15 refrigeration market as opposed to YPS being in the</p> <p>16 general commercial market.</p> <p>17 Q. And when did you sell these companies?</p> <p>18 A. July the 6th, 2004.</p> <p>19 Q. Generally, how long have you owned</p> <p>20 companies, these companies?</p> <p>21 A. I went to --</p> <p>22 MS. CONNOLLY: I'm sorry, can we move on a</p>

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<p style="text-align: right;">Page 22</p> <p>1 little bit because he's here in his capacity of the  2 Fund, not his personal capacity, so I don't really  3 see the sense in going on to a lot of detail.  4 MR. CHRISTOFFERSON: Sure. I'll finish up  5 quickly.  6 BY MR. CHRISTOFFERSON:  7 Q. I just wanted to know generally how long  8 you've been running companies such as these.  9 A. I bought into the firm in 1980.  10 Q. And just to clarify, what do you mean by  11 the firm?  12 A. Well, the YPS original company. There was  13 another one that I started off with as Young &amp; Pratt  14 Incorporated.  15 Q. Have you ever worked for the military?  16 A. No. Well, military contracts, government  17 contracts, is that the question?  18 Q. No. Just have you ever actually been  19 employed by the military?  20 A. No.  21 Q. Have you ever been employed by the federal  22 government?</p>	<p style="text-align: right;">Page 24</p> <p>1 past quarter and set any new coverages, eliminate  2 any coverages that we might need to, reset the rate  3 of contribution, and just all the general things of  4 an operation like that, hiring third-party  5 administrators.  6 Q. And are you chairman of the trustees, the  7 board of trustees?  8 A. Yes.  9 Q. And how long have you been chairman of the  10 board of trustees?  11 A. I guess it would have been something like  12 2000 would have been when I came into that  13 chairmanship.  14 Q. And what are your responsibilities as  15 chairman that are in addition to your regular  16 responsibilities as a trustee?  17 A. Well, to run the meetings, so to speak,  18 set the time for meetings, review again in a monthly  19 manner all things pertaining to the Fund, and set  20 any special meetings if needed.  21 Q. I apologize. I realize I hadn't  22 introduced myself formally on the record. I should</p>
<p style="text-align: right;">Page 23</p> <p>1 A. No.  2 Q. Or any state government?  3 A. No.  4 Q. Mr. Randle, you're a trustee of the sheet  5 metal fund; is that correct?  6 A. Sheet Metal Health and Welfare.  7 Q. Just so that the record is clear, what's  8 the official name of this fund?  9 A. Sheet Metal Workers International Health  10 and Welfare Fund.  11 Q. If you don't mind, I'll probably refer to  12 it just for ease of reference as the Fund.  13 A. Sure.  14 Q. But if it's never clear what I'm asking  15 about, let me know.  16 A. Uh-huh.  17 Q. How long have you been a trustee?  18 A. I think it was 1983 plus or minus when I  19 joined the Fund as a trustee.  20 Q. And as a trustee, what are your  21 responsibilities?  22 A. We meet quarterly, review data from that</p>	<p style="text-align: right;">Page 25</p> <p>1 have done that at the outset. I'm  2 Eric Christofferson. I work for Ropes &amp; Gray. I'm  3 an attorney at Ropes &amp; Gray, and I represent  4 Schering-Plough Corporation and  5 Warrick Pharmaceutical Corporation in this action.  6 I apologize for not stating that earlier.  7 I'd just like to talk a little bit about  8 the Fund itself and the organization of the Fund.  9 In general terms, what is the purpose of  10 the Fund?  11 A. It is to provide health and welfare  12 coverage for sheet metal workers throughout the  13 United States in a self-funded plan.  14 Q. So what is the relationship between the  15 Fund and, say, its member unions or employers?  16 MS. CONNOLLY: Objection to form.  17 THE WITNESS: Restate that.  18 BY MR. CHRISTOFFERSON:  19 Q. Is the Fund a multiemployer fund?  20 A. Yes, uh-huh.  21 Q. And how many employers are participants in  22 the Fund?</p>

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<p style="text-align: right;">Page 26</p> <p>1 A. You know, I wouldn't know.</p> <p>2 Q. Approximately, if you know.</p> <p>3 A. I wouldn't know the answer to that.</p> <p>4 Q. Do you know approximately how many</p> <p>5 beneficiaries are participants or members of the</p> <p>6 Fund?</p> <p>7 A. In the SMW Plus portion of this fund, it's</p> <p>8 approximately 17,000. In the actives, there's in</p> <p>9 excess of 3,000 actives.</p> <p>10 Q. And when you say actives, what do you mean</p> <p>11 by actives?</p> <p>12 A. Currently working members.</p> <p>13 Q. So the 17,000 that you said are currently</p> <p>14 involved in the SMW Plus --</p> <p>15 A. Retirees.</p> <p>16 Q. -- are retirees?</p> <p>17 A. Uh-huh.</p> <p>18 Q. And I understand today that we're</p> <p>19 principally going to be talking about the SMW Plus</p> <p>20 fund, but just by way of background, how many</p> <p>21 different benefit programs does the Fund operate?</p> <p>22 A. Well, two as I would term it, you know,</p>	<p style="text-align: right;">Page 28</p> <p>1 there?</p> <p>2 A. There are -- currently we have a unique</p> <p>3 situation in the fact that we have got three</p> <p>4 management trustees certified and four labor. We're</p> <p>5 in the process of certifying a fourth member on the</p> <p>6 management side, and the labor force one doesn't</p> <p>7 have a vote until we do that, so it's always an even</p> <p>8 number vote.</p> <p>9 Q. So there are currently six voting members</p> <p>10 of the trustees, board of trustees?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Does the Fund itself have any employees</p> <p>13 that, for example, help with administration of the</p> <p>14 Fund?</p> <p>15 A. Employees, no.</p> <p>16 Q. Is there anyone else besides the board of</p> <p>17 trustees who would be considered working for the</p> <p>18 Fund?</p> <p>19 A. Well, just, you know, Southern Benefits as</p> <p>20 a third-party administrator; an attorney,</p> <p>21 Jan Jennings here.</p> <p>22 Q. We were talking earlier about how it's a</p>
<p style="text-align: right;">Page 27</p> <p>1 one for the retirees and one for the actives being</p> <p>2 unique to those classes.</p> <p>3 Q. You said earlier that the fund is</p> <p>4 administrated by Southern Benefits Administrators;</p> <p>5 is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And where is Southern Benefits</p> <p>8 Administrators located?</p> <p>9 A. Goodlettsville, Tennessee.</p> <p>10 Q. If you could describe generally, please,</p> <p>11 what's the organizational structure of the Fund</p> <p>12 itself?</p> <p>13 MS. CONNOLLY: Object to form.</p> <p>14 THE WITNESS: Restate.</p> <p>15 BY MR. CHRISTOFFERSON:</p> <p>16 Q. You have a board of trustees --</p> <p>17 A. Correct.</p> <p>18 Q. -- that run the Fund, correct?</p> <p>19 A. And labor and management is represented,</p> <p>20 represented on that fund, even numbers of trustees</p> <p>21 from labor and management.</p> <p>22 Q. And approximately how many trustees are</p>	<p style="text-align: right;">Page 29</p> <p>1 multiemployer plan.</p> <p>2 A. Uh-huh.</p> <p>3 Q. And I believe you said it's a national</p> <p>4 plan?</p> <p>5 A. Yes. You know, the term is international.</p> <p>6 Q. International.</p> <p>7 A. With the sheet metal workers, they have</p> <p>8 employees in Canada, but they're not a part of this</p> <p>9 fund currently to my knowledge.</p> <p>10 Q. Are there member employers located in</p> <p>11 every state in the United States?</p> <p>12 A. Restate that question.</p> <p>13 Q. Are any of the member unions that are</p> <p>14 participants in the Fund -- strike that.</p> <p>15 Are there any unions that participate in</p> <p>16 this Fund located in Massachusetts?</p> <p>17 A. Yes, you know, the retirees in the</p> <p>18 SMW Plus are as we stated retirees living there.</p> <p>19 Now, as far as active participants, I'm not sure</p> <p>20 what level employer and employee, but SMW Plus</p> <p>21 definitely.</p> <p>22 Q. Do you have documentation, does the Fund</p>

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<p style="text-align: right;">Page 30</p> <p>1 have documentation of where its beneficiaries -- let 2 me just ask, do you call them beneficiaries or 3 participants? 4 A. Participants. 5 Q. Participants. Do you have any 6 documentation about where the participants live? 7 A. You know, the claims paid in the recent 8 past have been filed by chronological order. They 9 all, of course, have the addresses on them, so that 10 information is available with a laborious process. 11 Our third-party administrator is installing new 12 software that will instantaneously identify 13 locations of the employees, but to date it's not 14 been kept that way. 15 MR. CHRISTOFFERSON: Just for the record, 16 Defendants would request that any documentation 17 relating to the residence of any of the participants 18 specifically with respect to the State of 19 Massachusetts be produced. 20 MS. CONNOLLY: I'll just state for the 21 record that they're in the process of going through 22 some of that, and we will take your request under</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Various locations throughout the country. 2 Our trustees are scattered throughout the 3 United States. 4 Q. You testified a minute ago about the 5 records that you had or at least you alluded to the 6 records and that you're working on a new computer 7 system I think you mentioned. 8 If you could just describe in general 9 terms what files the Fund keeps related to those 10 issues. 11 MS. CONNOLLY: Objection to form. 12 THE WITNESS: Yeah, restate, if you would. 13 BY MR. CHRISTOFFERSON: 14 Q. With respect to the benefits that the Fund 15 pays, what files or records or documents does the 16 Fund keep or maintain? 17 A. To my knowledge, everything pertaining to 18 any action of any participants is kept in 19 Goodlettsville. They're going to electronic 20 retention on those records. I think there's a 21 six-year time frame that had hard copies to this 22 point. They took over the Fund in '96 and have all</p>
<p style="text-align: right;">Page 31</p> <p>1 advisement, but obviously producing documents 2 related to the residence of all their participants 3 would require turning over the entire fund to 4 Defendants, so we will have to talk later about what 5 specifically you need. 6 MR. CHRISTOFFERSON: That's fine. We can 7 talk at another time. 8 If you'll just excuse me for a second, I'm 9 having a screen saving issue here. It will take me 10 one minute. 11 BY MR. CHRISTOFFERSON: 12 Q. Where are the Fund's offices located? 13 Excuse me. 14 Where is the Fund's office located? 15 A. Well, in my interpretation, it doesn't 16 have an office, the Fund's. The third-party 17 administrator that takes care of claims and does 18 those issues for us is in Goodlettsville, Tennessee. 19 Sheet metal workers' headquarters is in Washington, 20 D.C. 21 Q. When the board of trustees meets, where do 22 you meet?</p>	<p style="text-align: right;">Page 33</p> <p>1 the records of theirs since then, and they pulled 2 some of the other records into Goodlettsville also. 3 Q. Is the third-party administrator also the 4 entity that maintains plan documents? 5 A. Yes. 6 Q. Does the third-party administrator to your 7 knowledge have any offices in Massachusetts? 8 A. Not to my knowledge. 9 Q. Or any employees in Massachusetts? 10 A. Not to my knowledge. 11 Q. Has the Fund ever held any meetings in 12 Massachusetts? 13 A. Not since I've been a part of the Fund. I 14 do not recall meeting in Massachusetts, no. 15 Q. Does the Fund own any property in 16 Massachusetts? 17 A. No. 18 Q. Has the Fund ever filed a tax return in 19 Massachusetts? 20 A. Now, that I don't know personally, sir. 21 MS. CONNOLLY: Do you want to go off the 22 record real quick? I'll have someone call.</p>

9 (Pages 30 to 33)

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<p style="text-align: right;">Page 34</p> <p>1 MR. SWEENEY: That would be a very good 2 idea. 3 (Whereupon, an off-the-record 4 discussion was held.) 5 BY MR. CHRISTOFFERSON: 6 Q. We were talking about earlier that there 7 are some participants in the retiree benefits 8 program that live in Massachusetts. 9 Have any of those participants or 10 beneficiaries purchased a drug manufactured by 11 Defendants in Massachusetts? 12 A. These people are on Medicare. We have the 13 Medicare supplement for them, and, you know, I think 14 very definitely they have, no different than all of 15 our participants throughout the country buying those 16 drugs, and, of course, the manufacturer of the 17 drugs, we would assume it's a pretty wide breadth 18 across the industry. 19 Personal knowledge, of course, I don't 20 have of that, but I'd feel comfortable that the 21 answer would be yes. 22 Q. And in a similar vein, has the Fund ever</p>	<p style="text-align: right;">Page 36</p> <p>1 pharmacy would be what I would say I think would be 2 happening. 3 MR. CHRISTOFFERSON: Would you please mark 4 this. 5 (Exhibit Randle 002 marked as 6 requested.) 7 BY MR. CHRISTOFFERSON: 8 Q. Mr. Randle, the court reporter has handed 9 you what's been marked Exhibit Randle 002. 10 Could you just take a moment to look over 11 that. 12 A. Uh-huh. 13 All right. 14 Q. Do you recognize this document? 15 A. Sure. 16 Q. What is this document? 17 A. It's an affidavit that I signed December 18 of '04 pertaining to this suit, civil action. 19 Q. Did you yourself prepare this document? 20 A. No. 21 Q. When did you first see this document? 22 A. I would say it would have probably been</p>
<p style="text-align: right;">Page 35</p> <p>1 made a payment to a medical services provider in 2 Massachusetts? 3 A. Yes, again, you know, following behind the 4 Medicare with those people there. 5 Again, personal knowledge, I don't exactly 6 have a day-to-day knowledge, but it would be logical 7 and I'd say yes, that definitely payments have been 8 made. 9 Q. And again, that documentation would reside 10 with the third-party administrator? 11 A. Correct. 12 Q. And just to close the loop, has the Fund 13 ever made a payment to a Massachusetts pharmacy for 14 a drug that was purchased in Massachusetts? 15 A. Pharmacy? 16 Q. Yes. 17 A. Again, this coverage as I understand it is 18 behind the Medicare, so, you know, those payments as 19 they go to a pharmacy or go to a physician, I think 20 most of this medication is physician-administered, 21 so I'm sure the physician is the billing point, and 22 payments are made to him and he's in turn paid the</p>	<p style="text-align: right;">Page 37</p> <p>1 December, you know, 12th, 13th. I signed it on the 2 14th, so a day or so before that. 3 Q. Did you review it for any errors? 4 A. Sure, uh-huh. 5 Q. Did you make any changes or revisions to 6 the exhibit? 7 A. I don't recall any changes being made. 8 Q. And that is your signature that appears on 9 Page 3? 10 A. Yes. 11 Q. And this is a true and correct -- 12 everything that's contained in this exhibit is true 13 and correct? 14 A. Yes, to my knowledge. 15 Q. I'll return to that in a few minutes. 16 Would you please mark this document. 17 (Exhibit Randle 003 marked as 18 requested.) 19 BY MR. CHRISTOFFERSON: 20 Q. The court reporter has handed you what's 21 been marked Exhibit Randle 003. 22 Could you just take a minute to look over</p>

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<p style="text-align: right;">Page 38</p> <p>1 that document.</p> <p>2 A. Yes.</p> <p>3 Q. Do you recognize this document,</p> <p>4 Mr. Randle?</p> <p>5 A. Yes.</p> <p>6 Q. What is this document?</p> <p>7 A. It's just the Summary Plan Description of</p> <p>8 the coverage for our participants.</p> <p>9 Q. Could you please turn to the page that's</p> <p>10 been Bates labeled SMW 0032.</p> <p>11 A. All right.</p> <p>12 Q. And at the top of the page, it says this</p> <p>13 booklet is only a summary.</p> <p>14 Do you see that?</p> <p>15 A. Uh-huh, yes.</p> <p>16 Q. What is the document that is referred to</p> <p>17 in the second sentence of the second paragraph of</p> <p>18 that section?</p> <p>19 A. The second sentence of the second</p> <p>20 paragraph, these rules and regulations are set forth</p> <p>21 in a legal document referred to as a plan document,</p> <p>22 that would be the official document in Southern</p>	<p style="text-align: right;">Page 40</p> <p>1 it.</p> <p>2 MR. JENNINGS: Yes, sir, that's the one</p> <p>3 that we provided to your attorney of record and she</p> <p>4 in turn provided to them.</p> <p>5 THE WITNESS: Yes, that's it.</p> <p>6 BY MR. CHRISTOFFERSON:</p> <p>7 Q. And if you would please just turn to the</p> <p>8 very last page of that document. It appears to be</p> <p>9 the last page of an amendment, and it's signed --</p> <p>10 the date on it is the 10th day of November, 2005.</p> <p>11 A. Uh-huh.</p> <p>12 Q. Is this to your knowledge the most current</p> <p>13 and up-to-date version of the plan document?</p> <p>14 A. We sign some of these -- each meeting that</p> <p>15 we have quarterly, we sign these updates from the</p> <p>16 prior meeting.</p> <p>17 Now, we would have met in December or so.</p> <p>18 It could be that there's another one or two</p> <p>19 amendments to this. It's constantly evolving.</p> <p>20 So for me to say that this is the last</p> <p>21 one, I couldn't state that for sure. I know at our</p> <p>22 last meeting two weeks ago as I recall I signed some</p>
<p style="text-align: right;">Page 39</p> <p>1 Benefit Administrators' headquarters that are kept</p> <p>2 for the Fund.</p> <p>3 MR. CHRISTOFFERSON: Would you please mark</p> <p>4 this document.</p> <p>5 (Exhibit Randle 004 marked as</p> <p>6 requested.)</p> <p>7 BY MR. CHRISTOFFERSON:</p> <p>8 Q. Mr. Randle, the court reporter has handed</p> <p>9 you what's been marked as Exhibit Randle 004. If you</p> <p>10 could just take a moment to look over this document,</p> <p>11 please.</p> <p>12 A. Yes.</p> <p>13 Q. Is this the document that is referred to</p> <p>14 in that paragraph we were just discussing in</p> <p>15 Exhibit Randle 003?</p> <p>16 A. Yes, I would say it is, you know, to the</p> <p>17 best of my knowledge, you know. I hadn't sit and</p> <p>18 reviewed it page by page, but knowing that they</p> <p>19 prepare this, we have all the amendments of each</p> <p>20 meeting if we have any to it that are attached that</p> <p>21 are signed, sort of chronological order that Jan is</p> <p>22 a part of that process too. I assume you've seen</p>	<p style="text-align: right;">Page 41</p> <p>1 amendments, so --</p> <p>2 Q. Just for the record --</p> <p>3 A. -- there might be one or two --</p> <p>4 Q. Excuse me.</p> <p>5 A. -- additionally.</p> <p>6 Q. Just for the record, the Defendants would</p> <p>7 request if there are any additional documents, any</p> <p>8 additional amendments, that those be produced.</p> <p>9 MS. CONNOLLY: That's the most current</p> <p>10 version, to my knowledge.</p> <p>11 THE WITNESS: All right.</p> <p>12 BY MR. CHRISTOFFERSON:</p> <p>13 Q. And if you'd look at the front, the very</p> <p>14 first page, SMW 0604, it says effective January 1,</p> <p>15 2002.</p> <p>16 A. Uh-huh.</p> <p>17 Q. Is that, in fact, the effective date of</p> <p>18 this plan document?</p> <p>19 A. Yes.</p> <p>20 Q. Were there any plan documents in effect</p> <p>21 prior to January 1st, 2002?</p> <p>22 A. Yes.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Q. Do you know where those documents are 2 kept?</p> <p>3 A. It would be this same document less some 4 of these amendments would be my thought in this 5 process. To my knowledge, like I say, this is a 6 living document that's added to as we proceed with 7 our meetings.</p> <p>8 Jan, is that ...</p> <p>9 MS. CONNOLLY: You can just testify to the 10 best of your knowledge.</p> <p>11 THE WITNESS: To the best of my knowledge, 12 uh-huh.</p> <p>13 BY MR. CHRISTOFFERSON:</p> <p>14 Q. Are there any other plan documents -- 15 strike that.</p> <p>16 Starting in 1991, are there any other plan 17 documents that were in effect other than what's been 18 marked as Exhibit Randle 004?</p> <p>19 MS. CONNOLLY: Objection to form.</p> <p>20 THE WITNESS: Restate.</p> <p>21 BY MR. CHRISTOFFERSON:</p> <p>22 Q. You've testified that the effective date</p>	<p style="text-align: right;">Page 44</p> <p>1 A. All right.</p> <p>2 Q. The very first page of this document, 3 which has been Bates labeled SMW 0581, please let me 4 know if I'm reading this correctly, Sheet Metal 5 Workers National Pension Fund Supplemental Medicare 6 Wraparound Plus, parens, SMW+, 1993.</p> <p>7 Did I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. Is the effective date of this document 10 1993?</p> <p>11 A. I would assume that it is. Again, like 12 you stated, this is a pension fund document. 13 Participants in SMW Plus are pensioners through the 14 Sheet Metal Workers Pension Fund, so this would be a 15 document that that separate group produced. I don't 16 recall seeing this document myself before. Since it 17 is part of the pension fund operation, so to speak, 18 I wouldn't necessarily.</p> <p>19 Q. So just so I understand you correctly, are 20 you saying that this is a different -- this 21 represents a different program than what's 22 represented in Exhibit Randle 003?</p>
<p style="text-align: right;">Page 43</p> <p>1 of the plan document that is Exhibit Randle 004 was 2 January 1st, 2002.</p> <p>3 Are there any other plan documents from 4 prior years that the Fund maintained?</p> <p>5 A. To the best of my knowledge, this, like I 6 said, was a living document. It would have started 7 when the Fund first started and has evolved through 8 that process. I think that there's separate 9 documents, and everything should -- you know, like I 10 say, this is my thought process. It could -- I'd 11 have to talk with Jan and the third-party 12 administrator to see, but my knowledge is that this 13 is, like I say, a living document started from the 14 original. It's just been amended.</p> <p>15 MR. CHRISTOFFERSON: Would you please mark 16 this document.</p> <p>17 (Exhibit Randle 005 marked as 18 requested.)</p> <p>19 BY MR. CHRISTOFFERSON:</p> <p>20 Q. The court reporter has handed you what's 21 been marked as Exhibit Randle 005. If you could just 22 take a moment, please, to look over that document.</p>	<p style="text-align: right;">Page 45</p> <p>1 A. That's correct. This is the Sheet Metal 2 Workers Health and Welfare, and this is the Sheet 3 Metal Workers Pension, so it's a description from 4 the pension fund of what coverage for the pensioners 5 in SMW Plus is covered on the health and welfare 6 fund.</p> <p>7 Q. Is the Supplemental Medicare Wraparound 8 Plus Program that is identified in Exhibit Randle 005, 9 is that the same Supplemental Medicare Wraparound Plus 10 Program that's identified in Exhibit Randle 003?</p> <p>11 A. Yes, in the fact with the exception that 12 this is in '93 and the one that we're looking at, 13 Exhibit Randle 003, is 2003, so it's the -- this has 14 evolved from that.</p> <p>15 Q. Understood. And where you were saying 16 that this comes from the pension fund as opposed to 17 the national health fund, this summary booklet comes 18 from a different source, is that what you were 19 saying?</p> <p>20 A. In '93, the pension fund was a 21 coadministrator of the pension fund and the health 22 fund, so not being a third party but being an</p>

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<p>1 in-house administrator of the health and welfare 2 fund, it was tied to both the pension and the health 3 and welfare at that time, so ... 4 Q. When did the two separate, the pension 5 fund and the health? 6 A. 1996 to my recollection. I think it was 7 January 1st of '96 is when we hired Southern Benefit 8 Administrators to be the third-party administrator. 9 Q. So prior to 1996 was the pension fund also 10 the administrator of the Supplemental Medicare 11 Wraparound Plus Fund? 12 A. Yes, basically in my understanding that's 13 the way it was. They had the same employee force, 14 so to speak. All the employees were pension fund 15 employees. They took care of the pension fund and 16 the health and welfare, and, you know, they adjusted 17 internally the monies between the two of them. 18 Q. If you could please turn to Page SMW 0596, 19 and if you see towards the top of the page in bold 20 it says Some Final Facts. 21 A. Uh-huh. 22 Q. And then under that, it says, the benefits</p>	<p>1 Q. Do you know if the Fund maintains a copy 2 of the version that was in effect in 1993? 3 A. In 1996 Southern Benefit went and obtained 4 all the records that were able to be found of the 5 health and welfare since its inception, and they 6 would have that, assuming it was there. 7 Q. Did the Fund look for those documents? 8 A. The Fund instructed the national pension 9 fund employees to produce all documents pertaining 10 to that fund since its inception. 11 MS. CONNOLLY: Do you mean instruction in 12 1996, or are you talking about for this litigation? 13 BY MR. CHRISTOFFERSON: 14 Q. Excuse me. With respect to your 15 obligations in this litigation, did you instruct 16 anyone to search for documents going back to 1993? 17 A. Did I personally instruct them? 18 Q. Did the Fund instruct them? 19 A. I believe it's '91 is the time frame we're 20 looking back to. 21 Q. So the Fund -- 22 A. Their instructions were to look back to</p>
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<p>1 information in this booklet contains only a summary 2 of the principal features of your policy and 3 coverage. 4 Did I read that correctly? 5 A. Uh-huh, yes. 6 Q. Is Randle Exhibit Randle 004 summarized by 7 Exhibit Randle 005? 8 MS. CONNOLLY: Objection to form. 9 MR. CHRISTOFFERSON: Strike that. Let me 10 ask a better question. 11 BY MR. CHRISTOFFERSON: 12 Q. Where this Exhibit Randle 005 says that it's 13 only a summary of the principal features of the 14 policies and coverage, is there an actual plan document 15 that this is referring to? 16 A. There would have been at that time. 17 Q. Do you know if that plan document is 18 Exhibit Randle 004? 19 A. No. 4 is dated 2002. This is 1993. So 20 as again I said, assuming I'm correct that this was 21 a living document, some portions of this would have 22 been a part of it in '93 but being updated.</p>	<p>1 1991, all records that pertained to the Fund during 2 that time. 3 Q. And your instructions would have included 4 prior versions of this plan document? 5 A. Sure. 6 Q. When was the Supplemental Medicare 7 Wraparound Plus Program, when did it first begin? 8 A. Well, like I say, I think it was '83 I 9 believe I stated that I joined the Fund. It had 10 been operational for a few years before then. To my 11 knowledge and recollection, it was a part of it in 12 '83, so it very possibly started as the Fund was 13 initially put together would be my guess, and that 14 being I think in the 1980 plus or minus time frame. 15 Q. Just to close the loop on this, do you 16 know how many different versions of this plan 17 document have been in effect since 1991? 18 A. Personally I don't. Again, my thought 19 process is that this is a living document. It 20 started and grew with amendments, changes, per each 21 meeting possibly. 22 MR. CHRISTOFFERSON: Just for the record</p>

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<p style="text-align: right;">Page 50</p> <p>1 the Defendants would just reiterate their request,  2 to the extent there are prior versions of this plan  3 document, that they be produced.  4 THE WITNESS: Uh-huh.  5 MS. CONNOLLY: You've got everything we  6 have been able to find.  7 THE WITNESS: Yeah.  8 BY MR. CHRISTOFFERSON:  9 Q. Turning to the actual Wraparound Plus  10 Program, generally speaking, what does this program  11 offer in terms of benefits to participants?  12 A. It is a supplementary coverage behind  13 Medicare. It has on hospital, as I recall, a \$900  14 annual deductible, picking up that remaining  15 20 percent, physician, facility. Part B is \$100  16 deductible, and it pays that remaining 20 percent  17 behind there.  18 So it's a supplemental coverage for all  19 retired sheet metal workers.  20 Q. What percentage of Medicare approved  21 charges does the Fund pay?  22 A. 20 percent.</p>	<p style="text-align: right;">Page 52</p> <p>1 that.  2 Q. Are participants required to pay a  3 deductible under this program, this Wraparound Plus  4 Program?  5 A. Yes, 900 on the Part A, 100 on the Part B  6 as I recall.  7 Q. And is this deductible, for example, on  8 Part B, this \$100 deductible, is that the  9 deductible -- is that a deductible in addition to  10 the deductible that Medicare requires, or is this  11 the Medicare deductible that you're referring to?  12 MS. CONNOLLY: Objection to form.  13 THE WITNESS: Restate.  14 BY MR. CHRISTOFFERSON:  15 Q. What is -- does the Fund in connection  16 with the Medicare Wraparound Plus Program require a  17 deductible over and above the \$100 deductible that  18 Medicare requires?  19 A. To my knowledge, they don't. I think it's  20 one and the same, both those deductibles, but, you  21 know, that has been in place, and I think it steps  22 up. Medicare changes that through the years or has</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. If you know, how does Medicare determine  2 the approved amount for physician or medical  3 services?  4 MS. CONNOLLY: Objection, form.  5 THE WITNESS: Do you want to restate?  6 BY MR. CHRISTOFFERSON:  7 Q. You've said earlier that the Fund pays  8 20 percent of what Medicare approves in charges.  9 Do you know how Medicare determines what's  10 approved?  11 A. I don't personally know how. They have  12 their formula on that.  13 Q. And specifically physician-administered  14 drugs, do you know how they determine the amount  15 that's paid?  16 MS. CONNOLLY: Same objection.  17 THE WITNESS: Do you want to restate that?  18 BY MR. CHRISTOFFERSON:  19 Q. Do you know how Medicare determines what's  20 the allowable amount for physician-administered  21 prescription drugs?  22 A. No, I don't have personal knowledge of</p>	<p style="text-align: right;">Page 53</p> <p>1 changed it, so it coincides with theirs.  2 Q. Is there any out-of-pocket payment cap in  3 this program for participants?  4 A. No. We pay the 20 percent behind any  5 Medicare-approved charge.  6 Q. And any amount that the participant might  7 otherwise be responsible for he or she has to pay  8 regardless of how much he or she has paid in the  9 past, would that be accurate?  10 A. Restate that.  11 Q. Let me see if I can do it by way of  12 hypothetical.  13 For example, if someone has been receiving  14 benefits over the course of a year and is having to  15 pay in addition to the 80 percent that Medicare pays  16 of approved charges and the 20 percent that the Fund  17 pays of approved charges, the provider perhaps is  18 charging them more money and that participant is  19 responsible for additional charges, is there any  20 point at which the Fund will start picking up all of  21 the charges for which that participant is  22 responsible?</p>

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<p style="text-align: right;">Page 54</p> <p>1 A. To my knowledge, you know, we have stated</p> <p>2 the deductibles in the two areas, Medicare being 80,</p> <p>3 we pay 20. There's no other cost there, nothing</p> <p>4 else charged or reimbursed.</p> <p>5 Q. What does the participant have to pay to</p> <p>6 participate in this program?</p> <p>7 A. We have two different groups of</p> <p>8 participants in this program. There's subsidized</p> <p>9 and nonsubsidized. The subsidized pays \$112 a</p> <p>10 month. The nonsubsidized pays \$135 a month.</p> <p>11 Q. How does a participant qualify for one</p> <p>12 group or the other?</p> <p>13 A. Subsidized would be your pension</p> <p>14 participation in some of the funding. There's a \$31</p> <p>15 amount that the pension plan contributes to those</p> <p>16 subsidized.</p> <p>17 Q. If you could please turn to Page SMW 0012.</p> <p>18 Towards the top above the section heading May I</p> <p>19 Enroll in SMW Plus, that sentence says, of course,</p> <p>20 in order to become and continue to be eligible for</p> <p>21 these benefits, you must make the appropriate</p> <p>22 monthly contributions on a timely basis.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Yes.</p> <p>2 A. Doesn't that start off --</p> <p>3 MS. CONNOLLY: It's Number 1.</p> <p>4 THE WITNESS: Under Number 1, okay.</p> <p>5 BY MR. CHRISTOFFERSON:</p> <p>6 Q. My apologies.</p> <p>7 A. Okay. Go ahead.</p> <p>8 Q. This means among other things that no</p> <p>9 coverage is provided under SMW Plus for take-home</p> <p>10 prescription drugs.</p> <p>11 Do you see that?</p> <p>12 A. Uh-huh, yes.</p> <p>13 Q. What's your understanding of what that</p> <p>14 means?</p> <p>15 A. That, you know, again it's</p> <p>16 physician-administered drugs that are covered which</p> <p>17 Medicare covers is what drugs that are covered here.</p> <p>18 Take-home, so it would have to be a</p> <p>19 physician-administered drug in their office.</p> <p>20 Q. So it would have to be a</p> <p>21 physician-administered drug and also covered by</p> <p>22 Medicare?</p>
<p style="text-align: right;">Page 55</p> <p>1 Are the appropriate monthly contributions</p> <p>2 the dollar amounts you were just discussing?</p> <p>3 A. Uh-huh, yes.</p> <p>4 Q. If you could turn to the previous page,</p> <p>5 11. In the second paragraph and the second sentence</p> <p>6 of the second paragraph, it says, SMW Plus does not</p> <p>7 provide coverage for prescription drug benefits and</p> <p>8 other services which are excluded by Medicare.</p> <p>9 Did I read that correctly?</p> <p>10 A. That's correct.</p> <p>11 Q. What does that mean?</p> <p>12 A. It means again that Medicare has to</p> <p>13 approve any claim for us to pay the 20 percent on</p> <p>14 that claim behind their 80 percent from Medicare.</p> <p>15 Q. If you could please turn to Page 18.</p> <p>16 Under Excluded Charges, Paragraph Number 1, the</p> <p>17 second sentence reads, this means among other things</p> <p>18 that no coverage is provided under SMW Plus for</p> <p>19 take-home prescription drugs or most eyeglasses, and</p> <p>20 the sentence continues.</p> <p>21 A. I didn't pick up on that exactly. Under</p> <p>22 Excluded Charges, we're talking the second sentence?</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Yes.</p> <p>2 Q. So there may be additional drugs that are</p> <p>3 covered by Medicare that are take-home that the Fund</p> <p>4 does not reimburse for?</p> <p>5 A. That's correct.</p> <p>6 Q. Is there any other definition that you</p> <p>7 know of -- strike that.</p> <p>8 Is there any other source either in the</p> <p>9 plan document itself or this summary that describes</p> <p>10 which prescription drugs are covered by the Fund and</p> <p>11 this program and which are not?</p> <p>12 A. No. It's just purely a simple matter of</p> <p>13 Medicare's covered pay, you know, that 80 percent,</p> <p>14 we cover the remaining 20.</p> <p>15 Q. As long as it's physician-administered?</p> <p>16 A. That's my understanding.</p> <p>17 Q. Does the Fund provide reimbursement to</p> <p>18 participants or beneficiaries for prescription drugs</p> <p>19 administered pursuant to Medicare's Outpatient</p> <p>20 Prospective Payment System or OPSP?</p> <p>21 A. State that again.</p> <p>22 Q. Sure. Maybe it would be helpful if we</p>

15 (Pages 54 to 57)

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<p>1 just turn to a page in this document. If you'd turn 2 to Page 19, there's a section -- 3 A. Okay. Wait a minute. You're talking 4 Exhibit A? 5 Q. I apologize. It's Exhibit Randle 003, the 6 Summary Plan Description. 7 A. What page? 8 Q. Page 19, Page 12 of the original document. 9 A. Okay. 10 Q. SMW 0019. 11 A. Okay. Where are we at? 12 Q. This is the section that's talking about 13 Medicare's Outpatient Prospective Payment System. 14 Under this particular provision, does the 15 Fund provide reimbursement to participants or 16 beneficiaries for drugs, for prescription drugs? 17 A. We're talking about the one that's headed 18 up a word about Medicare Outpatient -- 19 Q. Right, right. 20 A. Okay. Again, your question? 21 Q. Sure. Does the Fund provide reimbursement 22 for participants for drugs, prescription drugs</p>	<p>1 sentence? 2 A. I would say to the best of their ability 3 determining what Medicare has allowed. It speaks of 4 the difficulty in calculating the amount that 5 Medicare has allowed for the services, so I would 6 say their attempt would be again to find out what 7 has Medicare allowed and to pay the 20 percent of 8 that amount but never to exceed between the Medicare 9 payment and our payment 100 percent of the balance. 10 Q. Do you know if the Fund reimburses under 11 this provision for prescription drugs as part of the 12 services that are reimbursed? 13 A. I would assume the physician-administered 14 drugs, Medicare approved, would be paid under that. 15 Q. And again, where it says the Fund will 16 determine the total allowable charge, do you know if 17 that determination is made on the basis of average 18 wholesale price or AWP? 19 MS. CONNOLLY: Objection to form. 20 THE WITNESS: Restate. 21 BY MR. CHRISTOFFERSON: 22 Q. You've testified that at least it's your</p>
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<p>1 administered pursuant to the Medicare Outpatient 2 Prospective Payment System? 3 A. Being a part of the Summary Plan 4 Description, you know, I feel this is the exact 5 documents that we're guided by. So again, there is 6 some kind of payment. Sounds like they're speaking 7 to the fact they don't know for sure if it's 8 80 percent that Medicare pays, but there's a payment 9 made, reimburse 20 percent of the amount but only up 10 to the outstanding balance. 11 So state the question again. 12 Q. Let me ask it a different way maybe to 13 make it a little more precise. 14 In the penultimate sentence there of the 15 last paragraph, it says, however, the Fund office 16 will determine a total allowable charge, and we will 17 reimburse 20 percent of that amount but only up to 18 the actual outstanding balance. 19 Did I read that correctly? 20 A. Yes. 21 Q. Do you know how the Fund office determines 22 the total allowable charge that's referenced in this</p>	<p>1 understanding that if a physician-administered drug 2 is administered pursuant to the provision or I 3 should say pursuant to the Outpatient Prospective 4 Payment System and that the Fund is reimbursing, 5 providing reimbursement for that drug, that the Fund 6 will do its best -- strike that -- that the Fund 7 will determine the total allowable charge. 8 Do you know if that determination is based 9 upon the average wholesale price of that drug? 10 MS. CONNOLLY: Same objection. 11 THE WITNESS: What did you say? 12 MS. CONNOLLY: Same objection, but you can 13 answer. 14 THE WITNESS: Our instructions to them, 15 what I understand is done is that they never deviate 16 from the Medicare-approved claim. So it sounds like 17 some of these are a little bit hard to interpret, 18 but they always base from the Medicare approval. 19 They don't step out and look at any costs separate 20 from that Medicare approval. 21 So they let Medicare be the guide. 22 BY MR. CHRISTOFFERSON:</p>

16 (Pages 58 to 61)

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<p style="text-align: right;">Page 62</p> <p>1 Q. So you don't know if it was based on AWP 2 or not?</p> <p>3 MS. CONNOLLY: Objection to form. 4 THE WITNESS: Restate it. 5 BY MR. CHRISTOFFERSON: 6 Q. You don't know whether the determination 7 that the Fund makes pursuant to this section with 8 respect to physician-administered drugs is based on 9 average wholesale price of those drugs? 10 MS. CONNOLLY: Objection to form. 11 You can answer. 12 THE WITNESS: Again, they're instructed to 13 follow Medicare. Medicare would be the one doing 14 this average wholesale price situation. Our people 15 should never step into that arena. It's always 16 behind the Medicare. 17 Is that -- the answer, to my knowledge, 18 that's the way that they have all been handled. 19 BY MR. CHRISTOFFERSON: 20 Q. So you do know that it's based on AWP? 21 A. No, it's based on Medicare, on their 22 approval, their paid claim.</p>	<p style="text-align: right;">Page 64</p> <p>1 Medicare know who my participants are, and when that 2 Social Security Number comes up, it would come to 3 it. 4 But, you know, the actual methodology of 5 that I'm not totally familiar with. 6 MS. CONNOLLY: Eric, before you do that, I 7 need to take the quick break I told you about. 8 MR. CHRISTOFFERSON: Go right ahead. 9 (Whereupon, a short recess was 10 taken.) 11 MR. CHRISTOFFERSON: Let's go back on the 12 record. 13 Just for the record, no one has identified 14 themselves on the conference call that we have set 15 up for this deposition, so we're going to 16 disconnect. 17 BY MR. CHRISTOFFERSON: 18 Q. Mr. Randle, we were just talking about the 19 claims process procedure. That's redundant, isn't 20 it? Sorry, the claims process, and you said that 21 you're not familiar with the actual methodology of 22 the procedure.</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Well, you've testified earlier that 2 there's a third-party administrator. 3 A. Uh-huh. 4 Q. How does the Fund generally process claims 5 for participants in this program? 6 A. Mailed in or however, faxed or whatever, 7 the claims come into the office. They have a staff 8 that's assigned to our particular fund with people 9 that are fully knowledgeable of these documents and 10 how they should be handled. They go through that 11 claim applying these standards and make payments 12 based off that. And if the claimant should 13 disagree, there's an appeal process to go through. 14 Q. And you mentioned that a document or 15 documents are mailed in. 16 What are those documents that generally 17 trigger the process? 18 A. Well, of course, it would be the Medicare 19 claim. Now, very possibly Medicare sends their 20 claims to them on those particular people. I don't 21 know the inner workings of that process, but I guess 22 if I were to try to set that up, I would let</p>	<p style="text-align: right;">Page 65</p> <p>1 Who would be familiar with that process? 2 A. At Southern Benefit, Teresa Jernigan is a 3 lady that's the supervisor of our particular fund, 4 so day-to-day, she would be the most familiar. 5 Q. Could you please spell that name, please? 6 A. T-e-r-e-s-a I believe is Teresa, and 7 J-e-r-i-g-a-n. I know there's more than one Teresa 8 there, so you have to be sure to use that last name. 9 MR. CHRISTOFFERSON: Would you please mark 10 this. 11 (Exhibit Randle 006 marked as 12 requested.) 13 MR. CHRISTOFFERSON: We can go back on the 14 record whenever you're ready. 15 BY MR. CHRISTOFFERSON: 16 Q. Mr. Randle, the court reporter has handed 17 you what has been marked Exhibit Randle 006; is that 18 correct? 19 A. Correct. 20 Q. If you could just take a moment to flip 21 through these documents. Obviously there's a lot of 22 information on each of these documents. I'm not</p>

17 (Pages 62 to 65)

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<p style="text-align: right;">Page 66</p> <p>1 asking you to read it. I just want you to</p> <p>2 familiarize yourself with it.</p> <p>3 A. The first one I opened up to is</p> <p>4 Teresa Jernigan's name on 84, which I believe I</p> <p>5 misspelled her name. J-e-r-n-i-g-a-n.</p> <p>6 Q. Well, that's fortuitous.</p> <p>7 I'm going to go over some of these in a</p> <p>8 minute, but just so that I'm clear, are these the</p> <p>9 kinds of documents you were referring to just a</p> <p>10 moment ago when you were saying that documents would</p> <p>11 be mailed in to the Fund, and that would be the</p> <p>12 basis of the claims process getting started?</p> <p>13 A. To my knowledge, yes.</p> <p>14 Q. Okay. You can set that aside for a</p> <p>15 minute.</p> <p>16 If you would, please, turn to Exhibit</p> <p>17 Randle 004, which is the plan document, effective date</p> <p>18 January 1st, 2002, and if you would, please turn to</p> <p>19 Page SMW 0632. Actually, if you turn to the</p> <p>20 previous page first, 631.</p> <p>21 It says Section 3.4, summary of schedule</p> <p>22 of benefits for optional employees described under</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. So they might not be -- that wouldn't be</p> <p>2 an employer, so to speak, under the Fund but someone</p> <p>3 who contracts with an employer?</p> <p>4 A. Restate that.</p> <p>5 Q. You said that optional employees are</p> <p>6 employees of a signatory contractor that work in</p> <p>7 their office.</p> <p>8 What's a signatory contractor?</p> <p>9 A. Someone that is signatory to a sheet metal</p> <p>10 negotiated contract for labor.</p> <p>11 Q. And how do those employees differ from the</p> <p>12 other employees that the or the participants that</p> <p>13 the Fund provides benefits for?</p> <p>14 A. They are not true sheet metal workers in</p> <p>15 most cases. They are the office staff of that</p> <p>16 contractor. Now, it can be the contractor and the</p> <p>17 office staff. Our requirement is that everyone, if</p> <p>18 you bring your optional employees in, you bring</p> <p>19 everybody in your office in under this coverage.</p> <p>20 There's no exceptions to that, all or none.</p> <p>21 Q. Okay. If you would, turn back, and I</p> <p>22 guess now we will go to 632, which is back under</p>
<p style="text-align: right;">Page 67</p> <p>1 Section 4.15 who are eligible to enroll for Medicare</p> <p>2 benefits and any of their eligible dependents who</p> <p>3 are eligible to enroll for Medicare benefits.</p> <p>4 Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. And then if you would turn to Page 642.</p> <p>7 If you could flag that page for yourself, 631, I'll</p> <p>8 come back to that, but 642 at the top says</p> <p>9 Section 4.15, Eligibility for Optional Employees.</p> <p>10 A. Uh-huh.</p> <p>11 Q. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Is that what -- that's the section that</p> <p>14 Section 3.4 on Page 631 was referring to?</p> <p>15 A. To my knowledge it would be, both</p> <p>16 identified as optional.</p> <p>17 Q. What is optional employees?</p> <p>18 A. Optional employees are employees of a</p> <p>19 signatory contractor that work in their office, so</p> <p>20 the plan offers coverage for all of their staff</p> <p>21 should they want -- should that employer want to</p> <p>22 take that coverage.</p>	<p style="text-align: right;">Page 69</p> <p>1 Section 3.4, and it says at the top For Eligible</p> <p>2 Employees and Their Eligible Dependents, then it</p> <p>3 says Medical Benefits. And then it says, the Fund</p> <p>4 will pay major medical expense benefits for charges</p> <p>5 approved by Medicare but not paid by Medicare.</p> <p>6 These will generally include, and then there's a</p> <p>7 list of bullets, Part A deductible, Part A facility</p> <p>8 copayments for hospital and skilled nursing</p> <p>9 facilities, Part B deductible, Part B copayments and</p> <p>10 first three pints of blood.</p> <p>11 Mr. Randle, could you tell me how this --</p> <p>12 the benefits for optional employees and specifically</p> <p>13 the Medicare benefits for these optional employees,</p> <p>14 how is that related to the SMW Plus Wraparound Plus</p> <p>15 benefits program?</p> <p>16 A. It's totally separate of SMW Plus. That's</p> <p>17 a group into itself. These optional people are</p> <p>18 under the actives, the 3,000 plus people. They're</p> <p>19 covered under that.</p> <p>20 And, Jan, to my recollection, we would</p> <p>21 have an amendment back here pertaining to Medicare</p> <p>22 coverage on optional employees later on. That rings</p>

18 (Pages 66 to 69)

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<p style="text-align: right;">Page 70</p> <p>1 a bell with me because I'm going to be there pretty  2 soon. I'm going to be covered at 65, you know. I  3 don't think that there is a supplemental, shall we  4 say, behind Medicare for optional employees.  5 Q. But they would receive coverage for Part B  6 deductibles and Part B copayments?  7 A. Well, if they are not covered at all by an  8 amendment on back here, no, but that is my  9 recollection, that within this last three years or  10 so we eliminated those who retired at age 65  11 basically is what I recall from coverage.  12 So this was at one time in place, again,  13 this living document here was, but I think you'll  14 find a sheet through here that's going to remove  15 those people from the Medicare supplement.  16 Q. Okay. Just so I'm clear, it's your  17 understanding that perhaps at one time optional  18 employees would be able to receive Medicare benefits  19 from the Fund but no longer?  20 A. That is my recollection.  21 Q. Is the Fund making claims for damages with  22 respect to payments it made or may have made,</p>	<p style="text-align: right;">Page 72</p> <p>1 in this.  2 BY MR. CHRISTOFFERSON:  3 Q. And I apologize, this document I received  4 late yesterday afternoon, so I didn't get a chance  5 to review it as thoroughly as I would have liked,  6 and I understand that you're suggesting there's  7 probably an amendment at the back?  8 A. Yes.  9 Q. I'm not asking you to look through.  10 Do you have a memory of approximately what  11 point the optional employees were -- the Medicare  12 benefits were eliminated for optional employees?  13 A. I would say four years ago would be my  14 memory of that. The older I get, the time period  15 varies, not as on target as I once was.  16 Q. If you could please turn to Page 634 and  17 635. Actually, I'm sorry, can we please turn first  18 to Page 677 -- no, not 677. I will find it.  19 It's Page 77, which is 687. I'm sorry.  20 A. All right.  21 Q. And the first paragraph, it says -- well,  22 at the top, it says Section 6.1, Supplemental</p>
<p style="text-align: right;">Page 71</p> <p>1 Medicare payments it may have made, copayments or  2 deductible payments, with respect to optional  3 employees?  4 MS. CONNOLLY: Objection to form.  5 THE WITNESS: Restate that.  6 BY MR. CHRISTOFFERSON:  7 Q. You testified that it's your understanding  8 that optional employees are no longer eligible for  9 Medicare benefits.  10 A. Uh-huh.  11 Q. But at one time they were; is that  12 correct?  13 A. That's what this appears to say, yes.  14 Q. In this lawsuit, are you seeking damages  15 with respect to payments the Fund made on behalf of  16 optional employees pursuant to Medicare?  17 MS. CONNOLLY: Objection to form.  18 You can answer.  19 THE WITNESS: My interpretation of that  20 would be if they were covered during part of this  21 time and they were paid 80 percent by Medicare on a  22 claim and we paid the 20 percent, that it would be</p>	<p style="text-align: right;">Page 73</p> <p>1 Medicare Wraparound Plus Benefits, and the first  2 paragraph says, the benefits described herein shall  3 be furnished to all retirees described under  4 Section 4.19 of the plan and such of their eligible  5 dependents as shall be covered in accordance with  6 those provisions, and then it goes on to say, the  7 last sentence of the second paragraph, the benefits  8 which shall be paid hereunder are limited to those  9 amounts outlined in Section 3.5 hereof.  10 Did I read that correctly?  11 A. Yes.  12 Q. Could you please turn back to Page 634.  13 Is this the section, the relevant section  14 of the plan document that describes the benefits of  15 the Supplemental Medicare Wraparound Plus Program?  16 A. I believe it is.  17 Q. And when you earlier testified that the  18 Fund pays 20 percent of the Medicare-approved amount  19 for physician-administered drugs, which section of  20 this benefits schedule indicates that such payments  21 are made?  22 A. I guess again this being a living document</p>

19 (Pages 70 to 73)

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